

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Criminal Action No.
) 10-00351-01/02-CR-W-GAF
DARRIN L. POTTER and MICHAEL)
H. CARTER,)
)
)
)
Defendants.)

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on December 28, 2011. Defendant Potter appeared in person and with retained counsel William Shull. Defendant Carter appeared in person and with retained counsel Kathleen Fisher. The United States of America appeared by Assistant United States Attorneys Roseann Ketchmark and Dan Nelson.

I. BACKGROUND

On December 15, 2010, an indictment was returned charging Defendant Potter with one count of conspiracy, in violation of 18 U.S.C. § 371; seven counts of altering/removing vehicle identification numbers (“VINs”), in violation of 18 U.S.C. §§ 511, 2; and four counts of trafficking in motor vehicles with altered VINs, in violation of 18 U.S.C. §§ 2321, 2. Defendant Carter was charged with one count of conspiracy, in violation of 18 U.S.C. § 371;

eight counts of altering/removing vehicle identification numbers (“VINs”), in violation of 18 U.S.C. §§ 511, 2; and four counts of trafficking in motor vehicles with altered VINs, in violation of 18 U.S.C. §§ 2321, 2.

The following matters were discussed and action taken during the pretrial conference:

II. TRIAL COUNSEL

Ms. Ketchmark announced that she and Mr. Nelson will be the trial counsel for the government. The case agent to be seated at counsel table is FBI Special Agent Andy Thomure.

Mr. Shull announced that he will be the trial counsel for Defendant Potter.

Ms. Fisher announced that she and Nathan Garrett will be the trial counsel for Defendant Carter.

III. OUTSTANDING MOTIONS

The following motions remain pending:

- Government’s Motion in Limine to Preclude Questioning and Arguments (Doc. No. 65), *filed* 08/24/11;
- Defendant Carter’s Second Motion in Limine (Doc. No. 80), *filed* 09/28/11;
- Government’s Motion for Jury Trial to Begin on Second Week of Trial Docket (Doc. No. 104), *filed* 12/21/11; and
- Government’s Motion in Limine to Exclude Evidence that the “Necessary Repair” Defense Applies to Re-Attachment of VINs (Doc. No. 105), *filed* 12/22/11.
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IV. TRIAL WITNESSES

Ms. Ketchmark announced that the government intends to call 12 witnesses without stipulations or 7 witnesses with stipulations during the trial.

Mr. Shull announced that Defendant Potter does not intend to call any witnesses during the trial. Defendant Potter may testify.

Ms. Fisher announced that Defendant Carter intends to call 5 witnesses during the trial. Defendant Carter may testify.

V. TRIAL EXHIBITS

Ms. Ketchmark announced that the government will offer approximately 225 exhibits in evidence during the trial.

Mr. Shull announced that Defendant Potter will not offer any exhibits in evidence during the trial.

Ms. Fisher announced that Defendant Carter will offer approximately 5 exhibits in evidence during the trial.

VI. DEFENSES

Mr. Shull announced that Defendant Potter will rely on the defenses of general denial and a statutory defense dealing with reasonable repairs, 18 U.S.C. § 511(b)(2)(B).

Ms. Fisher announced that Defendant Carter will rely on the defenses of general denial and a statutory defense dealing with reasonable repairs, 18 U.S.C. § 511(b)(2)(B).

VII. POSSIBLE DISPOSITION

Mr. Shull stated this case is definitely for trial.

Ms. Fisher stated this case is definitely for trial.

VIII. STIPULATIONS

The parties were not able to identify any likely stipulations.

IX. *TRIAL TIME*

Counsel were in agreement that this case will take 4-5 days to try.

X. *EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS*

The U. S. Magistrate Judge ordered:

That, in addition to the requirements of the Stipulations and Orders filed February 25, 2011, counsel for each party file and serve a list of exhibits he or she intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all available exhibits premarked using the stickers provided by the Clerk of Court by or before December 28, 2011;

That counsel for each party file and serve requested jury voir dire examination questions by or before noon, Wednesday, January 4, 2012;

That counsel for each party file and serve, in accordance with the requirements of Local Rule 51.1, requested jury instructions by or before noon, Wednesday, January 4, 2012. Counsel are requested to provide proposed jury instructions¹ in both hard copy form, as required by Local Rule 51.1, and, if available to counsel, 3 and 1/2 inch computer disk in a form compatible with WordPerfect 9.0, 10.0, or 11.0.

XI. *UNUSUAL QUESTIONS OF LAW*

Motions in limine will probably be filed concerning chain of custody issues. There are no unusual questions of law.

¹Counsel in all cases assigned to be tried before Chief Judge Fernando Gaitan, Jr., as reflected in the trial letter, shall meet and prepare a packet of agreed proposed jury instructions to be submitted to Judge Gaitan and e-mailed to marylynn_shawver@mow.uscourts.gov and rhonda_enss@mow.uscourts.gov by January 6, 2011. To the extent there are disagreements to certain instructions, each attorney shall tab and submit his or her preference on those instructions. The instructions shall be listed in the order they are to be given.

XII. TRIAL SETTING

All counsel and the defendants were informed that this case will be listed for trial on the joint criminal jury trial docket which commences on January 9, 2012. The parties are requesting the second week of the docket due to scheduling conflicts.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
December 28, 2011

cc: Mr. Kevin Lyon